THE CITY OF SAN DIEGO

MANAGER'S REPORT

DATE ISSUED: October 13, 2004 REPORT NO. 04-228

ATTENTION: Honorable Mayor and City Council
Docket of November 9, 2004

SUBJECT: Fourth Update to the Land Development Code (LDC)

REFERENCES: City Manager Report Nos. 03-154 and 02-238
Planning Commission Report No. P-01-237

SUMMARY

Issues - Should the City Council approve policy issues 1-7 including 1) a deviation process to allow persons with disabilities the equal opportunity to use and enjoy a dwelling, 2) amendments to the open space residential zone category, 3) dissolution of the Board of Zoning Appeals (BZA), 4) amendments to the public right-of-way review and approval process, 5) amendments to allow site reconnaissance and testing and to address illegal grading, 6) amendments to exempt public linear trails and access projects from development area regulations, 7) amendments to require restoration for emergency development activity conducted within environmentally sensitive lands, 8-24) LDC consistency corrections, and 25-42) minor format and reference corrections?

Manager's Recommendations –
Policy Issues:

1. Recommend that the City Council approve the proposed amendments to create a deviation process to allow persons with disabilities the equal opportunity to use and enjoy a dwelling.
2. Recommend that the City Council approve the proposed amendments to the open space residential zone development standards for narrow lots in urbanized communities.
3. Recommend that the City Council approve the proposed amendments to dissolve the Board of Zoning Appeals and transfer BZA powers and duties to the Planning Commission.
4. Recommend that the City Council approve the proposed amendments to modify the review and approval process for private improvements proposed within the public right-of-way.

5. Recommend that the City Council approve the proposed amendments to permit site reconnaissance and testing and approve minor amendments to the grading regulations to address illegal grading.
6. Recommend that the City Council approve the proposed amendments to exempt public linear trails and access projects from the Environmentally Sensitive Lands development area regulations and the development area regulations of the OR-1-2 zone.
7. Recommend that the City Council approve the proposed amendments to require timely restoration for all emergency development activity conducted within environmentally sensitive lands, in accordance with an approved restoration plan and the Biology Guidelines.

Consistency Corrections:

8-24. Recommend that the City Council approve the amendments to Chapters 5-6 and 10-14 of the Municipal Code to correct inconsistencies and clarify regulations.

Minor Reference and Format Corrections:

25-42. Recommend that the City Council approve the amendments to Chapters 11-14 of the Land Development Code to make minor reference and format corrections.

Land Use and Housing Committee Recommendation - On October 23, 2002, the Land Use and Housing Committee voted 5-0 to recommend approval of the Fourth Update with the exception of the SRO Hotel issue which was separated out for processing by the City Attorney. The Committee requested clarification prior to the City Council hearing with respect to the open space residential zone category (Issue 2). On July 23, 2003, LU&H reviewed proposed amendments to the LDC to further restrict grading in community plan open space areas. LU&H directed staff to forward proposed amendments to the City Council to address site reconnaissance and testing, illegal grading, public trails and public maintenance access, and restoration for emergency development. In accordance with LU&H direction, these items have been incorporated into the Fourth Update (Issues 5-7). Individual items are discussed in greater detail within the report.

Planning Commission Recommendation - On November 29, 2001, the Planning Commission voted 7-0 to recommend approval of the Fourth Update. The Commission directed staff to clarify the term "undue financial or administrative burden" (Issue 1), to continue to look at protection of community open space for potential updates in the future (Issue 2), and to make further revisions to the definition of kitchen (Issue 10). These items are discussed in greater detail within the issue analysis of this report.

Code Monitoring Team Recommendation - On November 14, 2001, the Code Monitoring Team unanimously agreed to support the policy issues, consistency corrections, and the minor format and reference corrections included in the Fourth Update. Additionally, the CMT recommended that requests for reasonable accommodations (Issue 1) be tracked for 18 months and reported back to the CMT for additional consideration. On May 8, 2002,

CMT voted 7-1-0 to recommend the creation of a process one grading permit to address site reconnaissance and testing.

Community Planning Committee Recommendation – On April 23, 2002 the CPC voted 17-6-1 to request that LU&H approve revisions to the LDC included in CPC Resolution No. 06-2002. CPC also voted 23-2-1 to establish a ministerial process for geotechnical work. CPC did not provide a formal recommendation on the Fourth Update as a whole.

Environmental Impact - Regarding Issues 1-4 and 8-42: These activities are exempt from CEQA pursuant to State CEQA Guidelines Section 15061(b)(3) ("General Rule").

Regarding Issues 5-7: The City of San Diego as Lead Agency under CEQA has reviewed and considered an Addendum to Environmental Impact Report (LDR No. 42-1548) dated August 18, 2003, covering this activity. Adopted on May 18, 2004 by Resolution No. R-299249.

Fiscal Impact - None.

Housing Impact – The reasonable accommodations language (Issue 1) will bring the City into compliance with Federal and State Housing Acts to afford persons with disabilities the equal opportunity to use and enjoy a dwelling. The proposed amendments will facilitate permit processing where an applicant can demonstrate the development will be used by a disabled person and that the permit request will not impose an undue financial or administrative burden on the City. The resulting housing will be beneficial to meet the needs of the City's growing population.

Code Enforcement Impact – Several of the Fourth Update items will facilitate the code enforcement duties of the Neighborhood Code Compliance Department (NCCD). The proposed site restoration language (Issue 5) addresses illegal grading and specifies the required restoration and mitigation prior to issuance of permits on the site. The language also requires approved grading and building plans be kept on the job site for coordination with City officials. Incorporating the reference to storage requirements within the Southeastern San Diego Planned District Ordinance (Issue 6) will allow NCCD staff to reference a specific section when issuing a notice of violation. Modification of the defined term "kitchen" (Issue 10) will address NCCD staff's current problem issuing citations for units that function as a separate, illegal dwelling unit, but may not contain all of the appliances listed in the current definition of kitchen.

BACKGROUND

The Fourth Update to the Land Development Code (LDC) is part of the code monitoring and update process directed by the City Council as part of the adoption of the LDC in January 2000. The first three updates resolved a total of 131 issues, the majority of which were minor corrections identified by staff and the public. Similar to the first three updates, the Fourth Update

addresses 42 issues which have been divided into three categories including policy issues, consistency corrections, and minor format and reference corrections.

Staff has conducted extensive research and analysis involving multiple City departments and other governmental agencies. The code update process typically involves the Community Planners Committee (CPC), Code Monitoring Team (CMT), Planning Commission (PC), and Land Use and Housing (LU&H), prior to presentation before the City Council. The CMT, with representatives from professional organizations, community groups, business owners, environmental groups, and other stakeholder groups provided staff with valuable input and assisted in drafting the amendment language. CMT recommended approval of the Fourth Update on November 14, 2001 and the creation of a process one grading permit to address site reconnaissance and testing on May 8, 2002.

The Planning Commission recommended approval of the Fourth Update on November 29, 2001, with additional recommendations. The Commission directed staff to address their concerns regarding reasonable accommodations (Issue 1), to continue to look at protection of community open space for potential updates in the future (Issue 2), and to make further revisions to the definition of kitchen (Issue 10). The definition of undue financial or administrative burden and definition of kitchen are discussed under the individual items. The recommendation for a long term management plan for community open space is beyond the scope of this Fourth Update item, but is expected to be incorporated into either the Planning Department Community Plan Update process or Development Services LDC work program at a future date. The amendments to the LDC to address site reconnaissance and testing and remediation for illegal grading were not heard by the Planning Commission. These items were directed to the City Council by LU&H.

Information on the Fourth Update was distributed to the Community Planners Committee at their July 23, 2002 meeting. Although no formal position was taken by CPC, members were encouraged to provide input for the October 23, 2002 LU&H Committee hearing. Correspondence was submitted by some of the CPC members and was responded to by staff prior to the LU&H Committee hearing. On April 23, 2002, CPC adopted Resolution No. 06-2002, addressing illegal grading. The CPC also voted to establish a ministerial process for geotechnical work.

The Committee on Land Use and Housing reviewed the Fourth Update on October 23, 2002 and recommended approval with modifications which have since been incorporated into the proposed draft language. The Committee requested clarification prior to the City Council hearing with respect to the open space residential zone category (Issue 2) as it related to correspondence from the Sierra Club regarding density in the OR-1-1 zone. Staff has since modified the Fourth Update to clarify that the OR-1-1 density requirement is not being modified. On July 23, 2003 and on July 21, 2004, LU&H directed staff to forward to City Council a portion of the recommendations from CPC Resolution No. 06-2002 related to illegal grading (Issues 5-7).

The LDC implementation work program is funded as an overhead expense in the Development Services Department budget. Since the previous LU&H Council Committee meeting in October 2002, processing of the Fourth Update was temporarily put on hold due to staffing and budgetary constraints. During that time, some of the issues originally included within the Fourth Update were reassigned and processed by other Departments. For example, the Planning Department processed policy amendments to the Companion Unit regulations and the City Attorney processed amendments to the SRO Hotel regulations. Also, as previously discussed the site reconnaissance and testing, remediation for illegal grading, limited exceptions for public linear trail and public maintenance access projects, and timely restoration issues were added to the Fourth Update at the direction of LU&H. As a result, the content of the Fourth Update has been slightly modified in scope from the original proposal.

DISCUSSION

The Fourth LDC Update includes policy issues, amendments to clarify regulations, and minor format and reference corrections. The seven (7) policy issues are substantive issues intended to address revisions to Federal or State law and changing development practices. There are seventeen (17) consistency corrections which will address inconsistencies in the current regulations and improve implementation of existing city policies. The third set of issues includes eighteen (18) minor format and reference corrections. The minor corrections address typographical errors and references to incorrect terms or numbers throughout the LDC.

Discussion of the policy issues (Issues 1-7) and consistency corrections (Issues 8-24) are included in the following pages under separate headings and also by reference within the Attachments. The minor corrections (Issues 25-42) are straightforward and are included by Attachment only. Attachment 1 provides a complete summary of the Fourth Update issues in a matrix format. Attachment 2 includes correspondence received by staff on the proposed Fourth Update. Attachment 3 contains the draft strikeout/underline ordinances for the policy issues, the consistency corrections, and the minor format and reference corrections prepared by the City Attorney.

Policy Issues

1. Reasonable Accommodations

   The Federal Fair Housing Act (FHA) and the California Fair Employment and Housing Act (FEHA) require that jurisdictions make reasonable accommodations in their zoning laws and other land use regulations to afford persons with disabilities the equal opportunity to use and enjoy a dwelling. On May 15, 2001, the Attorney General of the State of California sent a formal request encouraging local jurisdictions to adopt procedures for handling requests for reasonable accommodations. Although the mandate has been in place for several years, at the time of the Attorney General's correspondence only two local jurisdictions in California (Long Beach and San Jose) had provided a process in their zoning

codes specifically designed to address reasonable accommodations for people with disabilities.

On August 17, 2001, staff members from Disability Services, the Land Development Code (LDC) Implementation Team, and members from the disability community met to review reference materials and discuss how the reasonable accommodations procedures could be implemented through the LDC. On September 19, 2001, the issue was presented to the Code Monitoring Team (CMT) by staff members from Disability Services with members from the disability community in attendance. Based on the existing ordinances adopted by Long Beach and San Jose, as well as information compiled by Mental Health Advocacy Services referenced in the Attorney General's letter, staff drafted a process for reasonable accommodations that fits within the organizational structure of the LDC.

The proposed amendments would create a deviation process to modify existing residential development standards in circumstances where the development regulations would preclude reasonable accommodation of a dwelling for persons with disabilities. The proposed changes would allow deviations to the required minimum setbacks, minimum parking requirements, or maximum floor area ratio (FAR) up to five percent through a process one decision. This process would allow flexibility in the design of a dwelling to accommodate, for example, the ingress and egress of wheelchairs or special parking needs of accessible vans.

Additional deviations could be requested through a Neighborhood Development Permit (Process Two) which would require notification to the surrounding neighbors. The staff decision would be appealable to the Planning Commission. Deviations that may be requested with a Neighborhood Development Permit would include additional floor area ratio greater than five percent, but no greater than ten percent, encroachments into the angled building envelope plane requirements, or deviations from the accessory structure requirements. By adding flexibility in the application of residential development regulations through deviations in the LDC, the City will be able to provide persons with disabilities a process for requesting reasonable accommodations.

Since the previous hearing, staff has modified the proposed code language to add specificity and clarify the criteria to be considered for a reasonable accommodation application request. During the review, staff would consider the special need for the disability, the potential benefit that can be accomplished by the requested modification, the physical attributes of the property and structures, and whether there are alternative accommodations which may provide an equivalent level of benefit. Applicants will be required to demonstrate that the development will be used by a disabled person, that the deviation request is necessary to make specific housing available to a disabled person, that the development complies with all applicable development regulations to the maximum extent feasible, and that the deviation request will not impose an undue financial or administrative burden on the City.

At the November 29, 2001 hearing, the Planning Commission stated that the term "undue financial or administrative burden" in Section 131.0466(c) was not clear and recommended that staff conduct further research. After researching the Fair Housing Amendments Act of 1988, the United States Department of Housing and Urban Development's Section 504 of the Rehabilitation Act, and other case law, staff found that the determination of whether a particular accommodation is reasonable depends on specific facts, and must be decided on a case-by-case basis.

The determination of what is reasonable depends on two factors: 1) Does the request impose an undue burden or expense on the local government? 2) Does the proposed use create a fundamental alteration of the zoning program? If the answer to either question is "yes" the requested accommodation is unreasonable. For example, a person with a disability may request that the City waive the requirement for a side yard setback in a single dwelling unit zone in order to build a ramp to the front door. Granting this particular request would not cause an undue burden or expense for the City nor would the single dwelling unit character of the neighborhood be fundamentally altered. In this case the request would be reasonable and shall be granted. If the request would require that the City build a new road or extend utilities to a property causing a great public expenditure, the request would be imposing an undue financial burden on the City and therefore be unreasonable. Based on this information staff supports the language as currently drafted.

While the Fourth Update is only focused on amendments to the LDC, it is acknowledged that other City policies and practices may need to be reviewed in light of the reasonable accommodations request. This may include future updates to the General Plan and Progress Guide, the Housing Element, California Building Codes, and the Street Design Manual. The Disability Services Section of the Community Services Division will be working with the appropriate City departments and divisions to incorporate reasonable accommodations procedures and policies into other City documents in order to meet the stated Council goal "to create a City that is accessible to all people who live, work and visit here."

2. Open Space-Residential Zone Category

There are several urbanized communities such as Serra Mesa, Mid-City, and La Jolla, with existing residential development located adjacent to canyons. These parcels often contain split land use designations within their respective community plans with the intent of preserving community open space adjacent to residential designated areas. In many cases these community open space areas do not contain natural steep slopes or sensitive vegetation that would be protected under the Environmentally Sensitive Lands ordinance, but are still designated open space in order to provide visual relief within the community along canyon slope areas and to preserve the open space character of the land.

With the adoption of the LDC, the Open Space Residential zone category was created to address these residential parcels adjacent to canyons or steep hillsides with mixed open space and residential designations. The purpose of the OR zones is to preserve privately

owned property that is designated as open space in a land use plan for such purposes as preservation of public health and safety, visual quality, sensitive biological resources, steep hillsides, and control of urban form, while retaining private development potential. It has since been identified that the OR zone development standards do not adequately address the narrow lots in urbanized communities where the zones were intended to be applied. Amendments are proposed to the OR zones to allow for reasonable development of the applicable privately owned lots (limited to a maximum development area of 25 percent of the premises) and to better implement the protection of community open space.

Based on previous discussions at LU&H, the OR zones will be applied to sites through the community plan update process where appropriate based on the existing topography and the applicable land use designation. Rezone applications may also be requested by individual property owners. At this time, the majority of properties that have been rezoned to OR-1-1 are located in the Central Urbanized Planned District and Serra Mesa community.

The OR-1-1 zone does not adequately address the narrow lots in existing urbanized communities where the zone was intended to be applied. The required setbacks are too wide and the maximum floor area ratio (FAR) requirement is too low to allow for reasonable development. For example, the existing OR-1-1 zone requires 20-foot side yard setbacks which would make the building envelope only 10 feet wide for a typical 50-foot wide lot. Instead of clustering development in the most suitable area of the premises, the existing regulation would force development closer to the community open space.

The proposed amendment would modify the setbacks and FAR to be more consistent with the requirements of the residential zones while maintaining the protections of the open space zone in accordance with the purpose and intent of the OR zones. Lots in the OR zones would still be limited to a maximum of 25 percent developable area of the entire premises. The minimum front and rear setbacks would be reduced from 25 to 15 feet and the minimum side setbacks would be reduced from 20 feet to 8 feet. The maximum FAR would increase from 0.10 to 0.45. The maximum lot coverage requirement of 10 percent would be eliminated. All remaining use and development regulations, including permitted uses, density, maximum structure height, and allowable development area of 25 percent would remain the same.

At the previous LU&H hearing, the Committee directed staff to address the concerns raised by the Sierra Club with respect to density. It appears that there was an error in the draft strikeout underline language attached to the City Manager Report (02-238). There is no change proposed to the density requirement for the OR-1-1 zone. The existing density of one dwelling unit per 10 acres would still apply.

3. Board of Zoning Appeals

The Board of Zoning Appeals was originally established in 1952 to act on appeals of the Hearing Officer's decisions, which included decisions on Variances, Conditional Use

Permits and other special permits. The Board is typically composed of five members and an alternate appointed by the Mayor and confirmed by the Council. During the LDC update process, the function of the Board of Zoning Appeals was reevaluated by City staff, the Planning Commission, and the Board itself. Due to the changes in decision levels on some permits and the consolidation of processing under the LDC, it was determined that the BZA would only hear and determine appeals of general relief Variances.

Since implementation of the Land Development Code in 2000, the Board has only met an average of once a year due to the infrequency of variance appeals. In addition, there are only three active members which have made scheduling hearings difficult since the affirmative vote of not less than three members is necessary for any action of the Board.

When staff presented the issue to the members of the Board at their October 17, 2001 hearing, the general response was that although they meet infrequently, they do in fact serve a purpose in the review process. Board members expressed concern about disassembling the BZA and conversely suggested that they expand their role by taking over some of the appeals currently heard by the Planning Commission. Staff continues to believe that the infrequency of the Board's meetings, the low volume of items heard, and the unlikelihood that this trend will change indicates that the Board is no longer necessary. Staff is recommending the dissolution of the Board of Zoning Appeals and transferring the BZA powers and duties to the Planning Commission.

4. Public Right-of-Way Permit Review and Approval process

This Fourth Update item originally involved only a consistency correction to specify the permit type, however in accordance with LU&H direction, this item evolved into a policy issue to consolidate right-of-way information in the Land Development Code, clarify what permits are required, and clarify what standards should be applied during staff review. The proposed amendments would create a process four level decision Site Development Permit, process two level decision Neighborhood Development Permit, and a process one level decision Public Right-of-Way Permit.

Public Right-of-Way permits are currently addressed under Chapter 6 of the Municipal Code and Chapters 12 and 14 of the LDC, which has created confusion regarding the process. (Issue 7 addresses the non policy related inconsistencies between Chapter 6 of the Municipal Code and the LDC.) The Public Right-of-Way approval process is unclear regarding required permits and standards to be applied during staff review. The goal of the proposed LDC amendment is to clarify the permit review and approval process by consolidating the information in the LDC, reclassifying the various permit types and processes, and creating specific criteria for staff to apply during review of public right-of-way improvements.

Where the applicant proposing the right-of-way encroachment is not the record owner of the underlying fee title, a Right-of-Way Use permit is currently required in accordance with process four. Requests for private encroachments in the right-of-way constitute

development and should be processed as a development permit as opposed to a use permit. Staff is proposing that the Right-of-Way Use permit be reclassified as a Process Four Site Development Permit consistent with the structure of the Land Development Code. In order to address this problem, the Public Right-of-Way Use Permit Procedures (Chapter 12, Article 6, Division 9) would be repealed and the information would be transferred into the Site Development Permit Section (Ch 12, Art 6, Div 5) and Public Right-of-Way Permits Section (Ch 12, Art 9, Div 7).

There have been several shifts in policy regarding private improvements in the public right-of-way where the applicant owns the underlying fee title. Prior to implementation of the Land Development Code, the City Municipal Code prohibited fences and walls in the public right-of-way under Chapter 6. When the LDC went into effect in January 2000 this restriction did not change. In February 2001, the City Council approved an amendment to Municipal Code Chapter 6 to allow some encroachments such as fences and walls through a process two permit. However, the amendment did not include the necessary changes to the LDC to clarify that the process two permit should be processed as a Neighborhood Development Permit (NDP). This was the original scope of the issue within the Fourth Update.

Subsequently, staff received complaints that several minor encroachment requests have become unnecessarily cost prohibitive due to the process two requirement. LU&H recommended that fences and walls and other flatwork be allowed in the public right-of-way via a process one Public Right-of-Way Permit subject to certain standards, instead of the current process two requirement. As a result, the previous consistency correction issue has been modified and incorporated into the proposed Fourth Update as a policy issue.

All development in the public right-of-way will still be required to process an Encroachment Maintenance and Removal Agreement (EMRA) in addition to the applicable public right-of-way permit (Process Four SDP, Process Two NDP, or Process One Right-of-Way Permit). The information regarding the EMRA process will be transferred from Section 62.0302 and clarified in proposed Section 129.0715. Three development standards are included in order to assist staff with determinations on whether to approve an encroachment in the right-of-way through process one. The proposed standards require that there is no present public use for the right-of-way, that the encroachment is consistent with the underlying zone, city standards and policies, and that proposed encroachment is three feet or less in height. For other private improvements in the right-of-way where the property owner owns the underlying fee title and does not meet the exemption criteria listed in Section 129.0710 (b), a Neighborhood Development Permit may be requested in accordance with process two. For private improvements where the applicant does not own the underlying fee title, a Process Four Site Development Permit would be required.

5. Site Reconnaissance and Testing and Minor Amendments to Address Illegal Grading

On July 23, 2003, the Council Committee on Land Use and Housing reviewed proposed amendments to the LDC to further restrict grading in community plan open space areas and

amendments to create a process one grading permit for site reconnaissance. LU&H directed staff to forward several of the proposed amendments to the City Council as they related to illegal grading and a new process for site reconnaissance and testing. In accordance with LU&H direction, this item has been incorporated into the Fourth Update. The proposed amendments will facilitate the process for site reconnaissance and testing and remediation of illegal grading.

In order to prepare the required technical studies necessary to obtain a development permit, an applicant must conduct site reconnaissance for the purpose of basic data collection, research, or resource evaluation. The information collected is used for site design and to prepare required environmental studies, geotechnical reports, and historic site surveys. Site reconnaissance and testing were exempt from permits under the code in effect prior to January 1, 2000, but were not addressed with the adoption of the LDC. Under the LDC, any disturbance of land would be considered "development" therefore, an applicant conducting site reconnaissance or testing on a site containing Environmentally Sensitive Lands would be required to obtain a Site Development Permit. Then upon completion of the reconnaissance and testing, a second SDP would be required to request approval of the actual development project.

Staff has received numerous complaints from property owners and the development industry regarding this issue where the duplicative SDP's are a burden of cost and time that is prohibitive for many development projects. Staff has also received complaints regarding cases where applicants did not obtain the required SDP to conduct site reconnaissance, and due to the lack of coordination with City staff, resulted in unmitigated impacts to biological resources. The proposed amendments will help facilitate the process while ensuring that the work involved is the minimum necessary to accomplish the exploration, survey, or testing, and that any associated impacts are mitigated in conformance with the City's guidelines and requirements.

After considering the staff recommendation and public testimony on this issue, LU&H directed staff to prepare an ordinance requiring a Neighborhood Development Permit (Process Two) for reconnaissance and testing on a site that contains environmentally sensitive lands. The committee also directed staff to further develop proposed regulations that would allow reconnaissance and testing through a Grading Permit (Process One) as an option for consideration by City Council. Staff is providing three options for Council consideration (Attachment 3):

Option One – The first option would permit site reconnaissance and testing with a process one grading permit provided the applicant mitigates any impacts to sensitive biological or historical resources in conformance with the City's guidelines and regulations. Additionally, an engineering bond would be required to ensure revegetation of disturbed areas. These regulations would also require both on-site biological monitoring and cultural resource monitoring while testing is performed to avoid or minimize impacts to resources. This is the option recommended by staff to accomplish the desired coordination with the applicant regarding scope of work in advance of testing, while streamlining the process.

Option Two- The second option would require a Process Two Neighborhood Development Permit (NDP) for all site reconnaissance and testing. This option would require noticing adjacent property owners and community planning groups and would add approximately 4-6 months to the process. Once the NDP is approved and the site reconnaissance and testing completed, the applicant would have to submit a second development application for a Process Three or Four SDP with a minimum processing time of approximately six months. This option would involve community planning groups in the site reconnaissance and testing review process, but would not achieve the goal of streamlining the process for project applicants.

Option Three – The third option is a blend of the first two. This option would exempt development from ESL permitting requirements where development would not impact resources or where impacts would be below a level of significance (less than 0.1 acres of upland resources and less than 0.01 acres of wetlands). If impacts were above the stated level of significance, a Process Two NDP would be required. The processing of a NDP would add approximately 4-6 months to the process. Similar to Option 2, a subsequent SDP would be required for the development of the site.

In addition to the site reconnaissance and testing provisions, staff was directed to bring forward several amendments to address illegal grading. The proposed amendments would require that anyone grading without a permit restore the graded area prior to any other permit being processed, that a set of approved plans and specifications to be on-site during development, and that all impacts that occurred as part of an emergency be restored in conformance with the City's Biology Guidelines.

6. Public Linear Trails and Public Maintenance Access Projects

Linear trails and public access projects are project types that have very narrow footprints that extend for long distances. Where these projects are proposed on properties that contain environmentally sensitive lands, the project is subject to the development area restrictions in the OR zones and in the ESL regulations. The ESL and OR zone regulations provide for a maximum development area (total disturbance allowed by a development) of 25 percent on any property that is completely constrained by environmentally sensitive lands. For properties that have less than 75 percent of the premises constrained by environmentally sensitive lands, no disturbance of resources is permitted unless a deviation is granted according to the provisions contained in the ESL regulations.

Through the Site Development Permit process, the applicant is required to locate and quantify each environmentally sensitive resource and quantify the proposed encroachment into ESL with a breakdown for each individual premises in the project application. This process is particularly cumbersome for public trail and maintenance access projects that are located across multiple, large properties with varying amounts and types of ESL. Public entities such as the Joint Powers Authority, County Water Authority, and North County Transit District, and City Departments such as Engineering and Capital Projects, Metro

Wastewater, Park and Recreation, and Water have had to expend significant amounts of time and money to document each and every type of resource on these large properties in order to demonstrate that they do not exceed the 25 percent development area restriction.

Since no linear trail or public access project processed under the regulations of the OR zone or ESL has come close to exceeding this development area restriction, staff is recommending that public linear trails and public maintenance access projects be exempted from the requirement to inventory the entire premises for sensitive biological resources and steep hillsides. These public projects would still need to obtain a Site Development Permit (Process Three), would still need to substantiate that the public trail or access path would impact the least amount of environmentally sensitive lands, would still need to provide for full mitigation of any impacts to environmentally sensitive lands, and would need to be reviewed in full compliance with the California Environmental Quality Act (CEQA). The proposed amendment would eliminate unnecessary costs and time associated with documentation of resources on those portions of the site that will not be in any way affected by the trail or access road project. On July 21, 2004, LU&H voted 5-0 to approve staff's recommendation and forward to City Council the proposed amendments for public trails and access projects.

7. Emergency Restoration Regulations

   The Environmentally Sensitive Lands section allows for emergency development activity within ESL where it is deemed necessary by order of the City Manager to protect health or safety. The Sierra Club expressed concerns regarding the timing for restoration associated with emergency access impacts. On July 21, 2004, LU&H voted 5-0 to amend Section 143.0126 (a) and forward the item to City Council. The proposed amendment would require restoration of impacted ESL in a timely manner in conformance with the Biology Guidelines. Restoration plans would still need to be submitted to the City Manager within 60 days of completion of the emergency work, but the restoration work in accordance with the approved restoration plan would need to be initiated within 90 days of project completion or prior to the beginning of the next rainy season, whichever is greater.

Consistency Corrections

Amendments to the following issues are proposed to correct inconsistencies in the regulations, clarify confusing aspects of the regulations, or correct provisions that have created unintended consequences.

8. Southeastern San Diego Planned District Ordinance (PDO) - As part of the adoption of the LDC, the Planned District Ordinances were also amended to reflect the new LDC section numbers. During this process, the reference to the residential storage regulations was inadvertently left out of the Southeastern San Diego PDO. The proposed correction will add a reference to the applicable regulations section of the Southeastern San Diego PDO to reference LDC Chapter 14, Article 2, Division 11 (Outdoor Storage, Display, and Activity

Regulations). The change will allow Neighborhood Code Compliance staff to reference a specific section when issuing a notice of violation.

9. Remove redundancies between Chapter 6 and LDC - As part of the adoption of the LDC, many of the regulations contained in Municipal Code Chapter 6, Article 2 relating to public improvements, public right-of-way, encroachments, and grading were transferred to applicable sections of the LDC. However, the ordinance adopting the LDC did not repeal the necessary divisions. The proposed amendments would repeal the duplicative sections in Chapter 6, Divisions 1-3 and where necessary transfer the Chapter 6 regulations to the applicable sections of the LDC.

10. Defacing or Removing Posted Notices - Currently the LDC does not have a specific regulation that prohibits the defacing or removal of a Notice of Application or a Notice of Future Decision placed on a property. The proposed amendment would add a section to clarify that it is unlawful to deface or remove a posted notice. The change will allow Neighborhood Code Compliance staff to reference a specific section when issuing a violation citation.

11. Amend the Definition of Kitchen - When the LDC was adopted, the definition of kitchen changed from "a facility used or designed to be used for the preparation of food" to "facilities used or designed to be used for the preparation of food and contains a sink, a refrigerator, stove and a range top or oven." The definition became more specific by including the various appliances that must be present to determine if a room is a kitchen. The new definition has been problematic because a defining factor of a dwelling unit is that it must contain a kitchen. This has made it difficult for NCCD staff to issue citations for illegal dwelling units where a functioning dwelling unit does not have all of the appliances that constitute a kitchen per the LDC. In many cases the owners are renting out illegal units that lack adequate cooking facilities (small refrigerator, a small sink, and a microwave or hot plate) which in turn create health and safety hazards for the surrounding neighborhood.

    Staff originally proposed to revert to the former definition of kitchen that just stated that a kitchen is a facility used or designed to be used for the preparation of food. However, the Planning Commission recommended against the definition because they thought it was not specific enough. Staff has since revised the language as follows: "Kitchen means an area used or designed to be used for the preparation of food which includes facilities to aid in the preparation of food such as a sink, a refrigerator, and a stove, range top or oven." The new definition better meets the intent and provides some latitude for NCCD staff to make a determination if the unit is actually functioning as a separate, illegal dwelling unit.

12. Determining Proposed Grade and Height Measurement for Pools and Spas - Structure height is measured from the lower of existing or proposed grade, within five feet of the structure's perimeter, to the highest point of the structure. Proposed grade is the ground elevation that will exist when all proposed development has been completed. It was not intended that the height calculation for an adjacent structure be taken from the bottom of a pool, however, the only exception explicitly stated in the code deals with basements. In

order to clarify, Section 113.0231 will be amended to also exclude pools from the calculation of proposed grade. Additionally, a new section (Section 113.0270(a)(8)) and new Diagram 113-02OO will describe how to measure overall building height when a pool is located within 5 feet of the structure. Diagram 113-02H will also be modified to clarify where proposed grade is measured from for basements. The proposed changes will eliminate confusion when measuring structure height in these instances.

13. Procedures for Issuing a Stop Work Order - According to the current language the City Attorney must approve all Stop Work Orders before they are issued except where irreparable harm is imminent so as to warrant an emergency Stop Work Order. Clarification is needed to distinguish between work being done with a permit and work being done without a permit. The proposed language clarifies that the requirement for City Attorney approval only pertains to work where a permit has been issued. City Attorney approval is not needed to issue a Stop Work Order for work that is being done without a permit or being done illegally. Neighborhood Code Compliance would then be able to issue a Stop Work Order immediately under circumstances where a permit has not been issued.

14. When a Map Waiver May Be Requested - The Subdivision Map Act Section 66428 allows a subdivider to request a waiver from the requirement to file a tentative map, parcel map, or final map for the development of condominium projects. The current language in the LDC only addresses the construction of new condominium projects and does not specify that existing structures are also eligible for map waivers. The proposed language would clarify that conversions of existing structures into condominiums are allowed to request a map waiver of the requirement to file a tentative map or parcel map.

15. When a Demolition Removal Permit May Be Issued - The proposed amendment is needed to clarify when a demolition permit should be issued for a structure on a property that has a development permit application in process. The proposed edit is consistent with the requirement of consolidation of processing which requires that multiple permits or approvals be consolidated and reviewed by a single decision maker based on the highest level of authority.

16. Variable Setbacks in Residential Zone - In the Residential Estate (RE) and Residential-Single Dwelling Unit (RS) zones, side yard setbacks are allowed to observe a designated minimum dimension as long as the combined dimensions of both side setbacks equal at least 20 percent of the lot width. The variable setback option was intended to allow applicants flexibility in the siting of structures and to protect views where applicable. However, the variable side setback was not intended to allow development to observe minimum setbacks on both sides of the premises. Since this distinction is not clear, the proposed language clarifies that once a side setback is established for the premises, it applies to all additions constructed thereafter.

17. Consistency between Bay Window and Dormer Projections - As currently written, the LDC requires that bay windows must be placed at least four feet from the property line. The requirement for dormers is three feet from the property line. For consistency purposes, the

proposed amendment would allow both bay windows and dormers be placed three feet from the property line.

18. Mission Trails Design District - Currently the regulations state that any development or alteration of a structure within the Mission Trails Design District that requires a building permit would require a Site Development Permit (SDP). To clarify the intent of the Mission Trails Design District provisions, the proposed amendment will clarify that a SDP is not required for minor alterations even if a building permit is required.

19. Refuse and Recyclable Material Storage - The refuse and recyclable material storage section requires commercial development to locate material storage areas at least 25 feet from any pedestrian and vehicular access point. The code also requires that a premises served by an alley provide material storage areas that are directly accessible from the alley. Since alley access is encouraged for commercial development, it is difficult for development to meet both requirements. The proposed amendment distinguishes between commercial development served by an alley and commercial development without an alley. This will eliminate conflicting requirements and will require only commercial development not served by an alley to provide a storage area at least 25 feet from any access point.

20. Retaining Wall Regulations - The current LDC Diagram 142-03G (Retaining Wall Requirements) does not coincide with the text and can be confusing. The proposed modifications would update the text within the diagram for consistency with the text contained in the associated provisions. The diagram currently uses the term "horizontal separation" and the text in the provisions use the term "horizontal distance" to convey the same information. Additionally, the text below the diagram states that the horizontal separation can be equal to or less than the height of the upper wall, which is inconsistent with the requirements of the section. The proposed edits will clarify that the minimum horizontal distance must be equal to the height of the upper wall.

21. Measuring Setbacks – Setbacks are measured inward and perpendicular to the nearest property line. Underground structures are not subject to setback requirements unless the proposed location would conflict with required landscape and irrigation. The current code does not clearly address this potential conflict. Modified language is proposed in order to clarify that the required setbacks apply to those portions of underground parking structures, first stories, and basements that are above grade and where underground structures would conflict with required landscaping.

22. Turret Encroachment Beyond Maximum Structure Height in RT Zones. The RT zone allows for a turret (a small tower element) to encroach into the angled building envelope area up to five feet above the maximum height of the zone. The language currently does not distinguish between the base zone and applicable overlay zones. The proposed language will clarify that a turret may encroach beyond the maximum height of the applicable RT zone, but where an overlay zone is applicable the proposed turret shall not exceed the established height limit of any overlay zone. For example, the proposed encroachment shall

not exceed the 30-foot height limit established under Proposition D within the Coastal Height Overlay Zone.

23. Noise Abatement – The existing Sound Level Limits within Chapter 5 have not been updated to reflect the existing Building Code. Modifications are proposed to the Noise Abatement and Control Table to reflect the updated requirements and to clarify that the applicable limits are based on land uses and not base zones as the Table previously indicated.

24. Chimneys and Dormers – The current code addresses chimneys and dormers in separate sections of the code, but allows both chimneys and dormers to project into the space above the angled building envelope area in specified zones. The proposed code changes will clarify that both elements are permitted architectural projections into the angled building envelope in the specified residential zones.

Minor Corrections

25-30. Incorrect Terms.
31-37. Incorrect Numerical References
38-39. Typographical Errors
40. Format Change
41. Italicize Defined Term "encroachment"
42. Errors in Capitalization

CONCLUSION

The Fourth Quarterly Update includes 42 issues that were identified by staff and the public. The proposed amendments are intended to implement the adopted goals of the Land Development Code by clarifying the regulations, eliminating contradictions for internal consistency, and ensuring the code's integrity by adhering to a consistent code framework. Based on extensive analysis and public input for each issue described above, Development Services recommends approval of the proposed policy issues 1-7 (including a process one grading permit for site reconnaissance and testing as outlined in Option 1 of the Discussion section of this report), consistency corrections 8-24, and minor format and reference corrections 25-42 included in the Fourth LDC Update.

ALTERNATIVES

1. Modify the recommendations proposed for the policy issues (including adopting either Option 2 or 3 of Issue 5 regarding the site reconnaissance and testing provisions), consistency issues, and minor format and reference corrections.

2. Deny the proposed policy issues, consistency issues, and minor format and reference corrections.

Respectfully submitted,

Gary Halbert
Acting Development Services Director

Approved: George I. Loveland
Assistant City Manager

BROUGHTON/AJL

Attachments: 1. Fourth Quarterly Update Issues Matrix
2. Correspondence
3. Strikeout-Underline Ordinances Prepared by City Attorney